Secta. II-37—100,000—21-5-52.

Jiwka Development (1951 49) Department.

MS SERIES.

G.O. No. 240

Dated 8 8 1949

[Despatch Abstract.]

ACTS : THE MUSSALMAN WAKF Act. ... : ACT XXII OF 1923 :
ENFORCEMENT OF PROVISIONS : STEPS TO BE TAKEN : PROPOSALS : ORDERS
PASSED.

R.O.C. No. 3424/48-B1.

From
P.T. Raman Nayar, Esq., I.C.S.,
Registrar, High Court,
Madras.

To
The Secretary to Government,
Firka Development Department,
Fort St. George, Madras.

Dated, the 15th July 1948.

Sir,

Sub: ACTS - The Mussalman Wakf Act, 1923 - Enforcement of provision
Ref: Letter No. 297/48-4.F.D.(V) Firka Dev. Deptt. dated 5-5-1948.

- - - - - -

I am to say that under the Mussalman Wakf Act, 1923, District Judges have no power either to act suo motu to enforce the procivions of the Act against Mutwallis who fail to file accounts (vide in re Khazi Mahiuddin Sheriff Sahib - 1945 II M.L.J. 269) or to impose the penalty prescribed in section 10 of the Act (vide Syed Ismail Sahib v. Ethikasha Sarguru - I.L.R. 1942 (143). According to the latter decision, when an offence under the Act is committed, a complaint must be laid before a competent Criminal Court which alone can levy the prescribed penalties.

The duties connected with the collection of information about Wakfs and Mutwallis and of instituting prosectuions against defaulters, should, in their Lordships' opinion, be entrusted to an officer specially appointed or empowered for the purpose and provided with the necessary personnel. District Courts can only furnish to such an officer when required, the information whether the statement of accounts in any case has been duly filed or not.

SD. P.T. RAMAN NAYAR
Registrar.

REVENUE DEPARTMENT

Subject

ACTS - The MussalmanWakf Act - Act XXII of 1923 - Enforcement of provisions - Steps to be taken for report - Submitted.

B.P. Mis. No. 1716.

Station: Chepauk, Madras. Dated, the 29th December 1948.

C.A. Ramakrishnan Esq., I.C.S., Joint Secretary

S. Ranganathan, Esq., O.B.E., I.C.S., Commissioner of Land Revenue and Commercial Taxes.

--

READ: From the Government, Firka Development Department, Memorandum No. 297/48-5 F·D. (V) dated the 5th May 1948
Reports from Collectors.

RESOLUTION:

As directed by the Government in their Memo cited above, the Board has examined the question of finding ways and means to make the administration of the Mussalman Wakf Act more effective that at present, on consultation with the Collectors of districts. It finds, that the Act, which is a Central Act, is undoubtedly defective as it contains no provision for the practical administration of the supervisory and penal functions assigned to the District Court. The work of watching the submission of reports and accounts, checking them and launching prosectuions is of an executive nature and cannot as matters stand at present be satisfactorily done by a District Judge who is essentially a Judicial Officer and who has, moreover, not got the requisite subordinate staff. Moreover, the decision of the High Court in C.R.P. 392/45 (page 269 Madras Law Journal Part II/1945), that under the/~~District~~ the District Court has no power to enforce the submission of statements by wakfs has made the position still worse. It is therefore necessary that the Act is so modified as to ensure a better administration of the wakfs.

One of the suggestions made in that behalf is that a separate provincial Act, modelled on the U.P. Wakf Act, 1936, may be enacted superseding the operative provisions of Sections 3 to 10 of the Central Act. The Board has examined the suggestion and it finds it unnecessary to have in this Province, an elaborate Act like the U.P. Wakf Act, with its Shia and Sunni Central Wakf Boards, Commissioner of Wakfs, local Committees, etc.

Yet another suggestion is that the administration of Act may be entrusted to the Collectors of districts in preference to District Judges. It is claimed that the Revenue Department has got the requisite subordinate staff to enforce the provisions of the Act and that the addition in work will not be appreciable. The Board examined the possibility of empowering the officers of the Revenue Department (of and above the rank of a Tahsildar) to call for reports and accounts from the Wakfs and also to launch prsecutions in cases of default. It considers that Tahsildars and other subordinate Revenue Officers, if left to themsleves, are likely to be indifferent as in the case of Hindu Religious Endowments before the passing of the Hindu Religious Endowments Act. In ~~view of~~ this view the Board is not in favour of this suggestion. It however prorposes to make the Revenue Department a helpful auxiliary in the matter of administration of the Act.

Among the other suggestions made by the Collectors the following are to the point and implemnting them will go a long way towards the better working of the Act.

(1) Compiliation of an up-to-date list of all wakfs and maintaining it to date.

The reports from all the Collectors show that complete details of extant wakfs are lacking. All are agreed that the compilation of a list is necessary and that the Revenue Department is the best agency to complete the list. The Board ~~directs that the~~ submits

that the Collectors may be directed to get the lists complied. Copies of the lists may be communicated to the respective District Courts. The lists, so far as they relate to the village, taluk or District may be maintained by the Karnam, Tahsildar and the Collector respectively. The Village Officers may be asked to report changes in the list consequent on the creation of new wakfs, deletions etc and these changes may be effected in the lists and the District Courts advised accordingly. As an additional safeguard, Sub Registrars may also be instructed to intimate the registration of new wakfs to the District Judge, the Collector and the Tahsildar concerned.

The lists maintained by local Revenue Officials may be checked at the time of Jamabandy and their correctness ensured.

(2) Watching the submission of Statements:

It has been suggested that the Collector may himself take the initiative in this behalf and move the prosectuions under Section 10. Section 10 of the Act provides for the levy of a penalty of Rs. 500 for non-submission of the statement of particulars (Sections 3 and 4) and accounts (Section 5) or submission of incorrect particulars in the first instance and for a fine which may extend to Rs. 2,000 in cases of repeated offences. The power to launch these prosecutions vest in the District Dourt. When once the District Judge is supplied with particulars of all wakfs, the Board thinks that it may be left to him to exericse the powers vested in him by statute. It is not in favour of any departure in this behalf.

(3) Checking up the correctness of particulars in the Annual returns:

Under Sec.6 of the Act, the accounts in respect of institutions with a net income of over Rs. 2,000 should be audited and certified by a chartered accountant or by any member of an approved firm of auditors. In regard to institutions with a lesser income, the accounts should be passed by any person authorised by the Court. These are, in the Board's opinion, sufficient safeguards to ensure the correctness of statements. It does not consider that any fresh provision or alteration in the present procedure, necessary.

(4) Investing the District Judge with powers to call for and to enforce the submission of statements:

The ruling of the High Court in C.R.P.392/45 has made it impossible for the District Judge to call for information from Mutavalis. The responsibility of first information is laid under Sec.3 of the Act on the Mutavalis themselves. The Board considers it essential that powers should vest in the District Judge in the matter. The Act may therefore be so amended as to enable the District Judge to initiate action under Section 3 as well as to deal with defaulters who do not send accounts as required under section 5. The Board requests the Government of India may be moved in the matter.

(5) Some Collectors have also suggested that local Wakf Committees consisting of officials and non-officials may be constituted. The aim is to make these Committees assist the Dt.Judge in the working of the Act by having a watching brief over the wakfs. The Board finds no harm in constituting local wakf committees of 3 to 5 in strength to function in an advisory capacity.

In brief the Board submits that a better working of the Act can be secured by (1) compiling a list of wakfs and communicating it to the District Judges, (2) leaving the District Judge to enforce the penal provisions of the Act, (3) amending the Act in such a manner as to empower the District Judges to call for and to enforce submission of statements and accounts, and (4) by constituting local wakf Committees to function in an advisory capacity.

....

for JOINT SECRETARY.

To

The Secretary to Government,
Firka Development Department, Fort St.George,Madras.

GOVERNMENT OF MADRAS
Abstract.
**

ACTS - The Mussalman Wakf Act, 1923 - Act XXII of 1923 - Enforcement of Provisions - Steps to be taken - Proposals - Orders passed.

- -

Firka Development Department

G.O. (Ms) No. 240. F.D. Dated, the 8th March 1949
READ - the following -

From the Registrar, High Court, No. 3424/48-B1 dated the 15th July 1948.
From the Board of Revenue, No. 1716 dated the 29th December 1948.

- - - -

ORDER:

The Government have carefully examined the suggestions made by the Board of Revenue and the Registrar, High Court, for making the provisions of the Mussalman Wakf Act, 1923 really effective and consider that the suggestions made therein may be re-examined after watching the progress of the Muslim Wakf Bill, 1947, of Mr. Abdul Karooki Sahib, M.L.C. They, however, accept the recommendation of the Board that the Collectors of the districts be directed to compile a list of all Wakfs in their districts and communicate such lists to the respective District Courts. The Board of Revenue is requested to issue necessary instructions to all the Collectors in this Province. A copy of the compiled lists should be kept in the office of the Board of Revenue.

(By order of His Excellency the Governor)

M.S. JAGANNAYAKULU
Secretary to Government

To the Board of Revenue, Madras.
To the Registrar, High Court, Madras.

/True copy/

Office Assistant,
Madras Record Office, Egmore.

Sk.

25/8